U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

MAY 05 2005

FILE: [redacted] Office: BALTIMORE, MD Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) on November 26, 2003. The petitioner is a forty-three-year-old married citizen of the United States. The beneficiary was born in Mexico on September 19, 1991, and she is thirteen-years-old.

The district director issued a Notice of Intent to Deny the I-600 petition on June 23, 2004. The district director denied the I-600 petition on September 9, 2004, noting that the beneficiary had entered the United States in 1991 pursuant to a false claim of U.S. citizenship and that she resided in the United States. The district director found that the petitioner had failed to establish the beneficiary was present in the United States in parole status. The district director found further that the petitioner had failed to establish that the beneficiary had not been adopted in the United States. Accordingly, the district director found that the petitioner had failed to establish that the beneficiary qualified as an orphan for immigration purposes.

On appeal, counsel concedes that the beneficiary resides in the United States and that she entered the U.S. pursuant to a false claim of U.S. citizenship. Counsel asserts, however, that the beneficiary did not make the claim herself and that she should not be punished for the petitioner's claims regarding her citizenship. Counsel asserts further that at the time of the beneficiary's entry into the United States, she was technically paroled into the country. Counsel asserts that the beneficiary has therefore been technically in parole status since her 1991 entry, and that, because she has not been adopted, she qualifies as an orphan for immigration purposes.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), defines orphan in pertinent part as:

> [A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence

Title 8 of the Code of Federal Regulations (8 C.F.R.), section 204.3(k)(3) states:

> Child in the United States. A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204(d) and (e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

The present record contains an October 1, 1991, statement signed and sworn to by (petitioner [redacted] mother of [redacted] before a U.S. Consular Services Officer in Mexico. The statement is directed to the U.S. Immigration Inspector, and states that (the beneficiary) [redacted] resides in New Jersey and is a U.S. citizen by virtue of transmission at birth.

Counsel indicates on appeal that by allowing the beneficiary to enter the U.S. with the U.S Consular Services document, the immigration inspector technically paroled the beneficiary into the country. The AAO finds counsel's assertion to be without merit. The AAO notes that counsel provides no legal evidence to support his assertion. Moreover, the Immigration and Nationality Act (the Act), the Code of Federal Regulations and legal decisions clearly reflect that parole status applies to situations where an alien is seeking admission into the United States. Parole status does not apply to entry into the United States by U.S. citizens.

Section 212(d)(5)(A) of the Act, 8 U.S.C. § 1182(d)(5)(A), provides in pertinent part that:

> The Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any **alien** applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. (Emphasis added).

8 C.F.R. § 212.5 states, in pertinent part that:

> (a) The authority of the Secretary to continue an **alien** in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Assistant Commissioner, Office of Field Operations . . . . The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act. (Emphasis added).

Moreover, in *Matter of Dabiran,* 13 I&N Dec. 587, 589-590 (1970), the Board of Immigration Appeals quotes the U.S. Supreme Court decision, *Leng May Ma v. Barber,* 357 U.S. 193, 195 (1958), stating that:

> The Supreme Court has said: The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status and to hold that petitioner's parole placed her legally "within the United States" is inconsistent with the Congressional mandate, the administrative concept of parole, and the decisions of this Court.

Upon review of the evidence, the AAO finds that the petitioner has failed to establish that the beneficiary applied for admission into the United States as an alien or that she is in the United States in parole status, as required by 8 C.F.R. § 204.3(k)(3). The petitioner has therefore failed to establish that the beneficiary qualifies as an orphan pursuant to section 101(b)(1)(F) of the Act.[1]

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[1] Because the beneficiary fails to meet the parole requirements set forth in 8 C.F.R. § 204.3(k)(3), the AAO finds it unnecessary to address whether or not the beneficiary was adopted in the United States.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met her burden. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.